IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 169 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE A.R.DAVE
and
Hon'ble MR.JUSTICE D.A.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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KASHIRAM OMPRAKASH

Versus

COMMISSIONER OF INCOME TAX

Appearance:

MR KH KAJI for Petitioner No. 1
MR KISHOR T THAKORE for Petitioner No. 1
MR MANISH R BHATT for Respondent No. 1

CORAM : MR.JUSTICE A.R.DAVE
and
MR.JUSTICE D.A.MEHTA

Date of decision: 18/07/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE A.R.DAVE)

At the instance of the assessee, the following question has been referred to this court for its opinion under the provisions of sec. 256(1) of the Income-tax Act, 1961 (hereinafter referred to as 'the Act') by the Income Tax Appellate Tribunal Ahmedabad Bench 'A'

> "Whether on the facts and circumstances of the case, the Tribunal was justified in law in departing from its earlier decision on the same question?"

2. We have heard learned advocate Shri Akil Qureshi appearing for the revenue whereas the applicant-assessee has not appeared. The applicant has submitted a note to the effect that he would not like to engage any advocate and has submitted to the court that the matter be decided on merits.

3. We have heard learned advocate Shri Qureshi and have also gone through the relevant orders. We have carefully gone through both the orders passed by the Tribunal.

4. Upon perusal of the facts of the case, it is crystal clear that the basic facts pertaining to both the assessment years, namely, Assessment Year 1977-78 and Assessment Year 1979-80 are similar. During both the years, the tax already paid on behalf of the assessee firm was more than the amount of tax which was payable by the assessee. In other words, the sum total of advance tax paid and the tax deducted at source was more than the amount of tax which was assessed by the Assessing officer. Looking to the said fact, in our opinion, while passing the subsequent order for the Assessment Year 1979-80, the Tribunal was in error while not following the ratio of its earlier order for the Assessment Year 1977-78. We have also gone through the judgment delivered in the case of CIT, Central v. L.G. Ramamurthy and others, 110 ITR 453. Looking to the law laid down by the Madras High Court in the said case, it is very clear that the Tribunal should not have passed an order contrary to the order passed by it in the case of the assessee though the basic facts for both the assessment years were the same and more particularly when there was nothing for the Tribunal to change its view expressed by it at an earlier occasion.

5. In view of the above facts and law laid down in

the judgment referred to hereinabove, we answer the question in the negative i.e. in favour of the assessee and against the revenue.

The reference stands disposed of accordingly with no order as to costs.

(A.R. Dave, J.)

(D.A. Mehta, J.)

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